

# EXHIBIT 9

## FILED UNDER SEAL

1 UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

2  
3 NETLIST INC.,  
4 a Delaware corporation,

5 Plaintiff-Appellee,

6 vs.

Case No.: 22-55209

7 SAMSUNG ELECTRONICS CO., LTD.,  
8 a Korean corporation,  
9 Defendant-Appellant.  
10  
11  
12

13 TRANSCRIPT OF AUDIO-RECORDED ORAL ARGUMENT

14 Before: M. SMITH and DESAI, Circuit Judges, and AMON,

15 District Judge

16 June 8, 2023

17 1:36 p.m.  
18  
19  
20  
21

22 Transcribed By:

TERRI NESTORE

23 CSR No. 5614, RPR, CRR  
24

25 Job No. 6169798

Page 1

1 Your Honor. But even if the court doesn't agree that that  
2 should be the outcome, there needs to be a remand and a  
3 trial on these issues for sure.

4 And that's true as to materiality on 6.2 as well,  
5 and where I was going with that, when you go through the  
6 briefing on the issue of materiality, Netlist's argument  
7 was really, it was material because the supply obligation  
8 was a primary consideration for getting these licenses.

9 Well, number one, if you look at the JDLA and you  
10 look at the recitals, the recitals are very clear -- and  
11 parties put recitals in agreements to make sure language  
12 isn't tortured down the road by lawyers and courts, right?

13 Here's what our purpose is, interpret this  
14 agreement consistent with our purpose.

15 And when you look at the recitals, what does it  
16 say about the licenses?

17 Whereas in connection with their collaboration  
18 hereunder, the parties wish to grant to each other a  
19 cross-license under each party's patents.

20 The licenses are being given in connection with  
21 the collaboration. That's the joint development project.

22 And Netlist got a whole bunch of consideration in  
23 addition to this supply obligation.

24 If there were an unlimited supply obligation, it  
25 would be called out in some fashion.

C E R T I F I C A T E

I, TERRI NESTORE, Certified Shorthand Reporter/  
Transcriptionist, do hereby certify that I was authorized  
to transcribe the foregoing recorded proceeding, and that  
the transcript is a true and accurate transcription of my  
shorthand notes, to the best of my ability, taken while  
listening to the provided recording.

I further certify that I am not of counsel or  
attorney for either or any of the parties to said  
proceedings, nor in any way interested in the events of  
this cause, and that I am not related to any of the  
parties thereto.

Dated this 22nd day of October, 2023.

A handwritten signature in blue ink that reads "Terri NESTORE". The signature is written in a cursive, slightly stylized font.

TERRI NESTORE, CSR 5614, RPR, CRR